

# Press at Crossroads in the Land of Freedoms

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Warren and Brandeis, who were the two leading American academicians and judges state in their thesis titled „The Right to privacy“ in 1890 that „intensity and complexity [1] of life, attendant upon advancing civilization, have rendered necessary some retreat from the world and man under the refining influence of culture, has become more sensitive to publicity so that solitude and privacy have become more essential to the individual, but modern enterprise and invention has through invasion upon his privacy, subjected him to mental pain and distress, far greater than could be inflicted by mere bodily injury.“[1]

United States of America is the land which is known for its First Amendment, which guarantees freedom of expression. Fourteenth Amendment makes the state comply with its provisions to ensure due process for its citizens. Although the word „privacy“ does not appear in the Constitution of America, through the due process clause the Supreme Court has given privacy a constitutional position based on the First, Third, Fourth, Fifth, Ninth and the Fourteenth Amendments[3]

In *Roberson v. Rochester Folding Box Co.*[4] Chief Justice Parker stated that right of privacy—is the right to be left alone and he mentioned about the article written by Warren and Brandeis .The Court said that invasion into a marriage goes against privacy concept”[5]

In *Katz v. United States* [6], it was held that an individual is protected by Fourth Amendment wherever he or she has a „remarkable expectation of privacy“. [7]Protection of privacy under the Fourth Amendment seems to have been confusing. The reason being that the Fourth Amendment does not refer to privacy; it only states protection from seizures and arrests etc. [8] The law must develop a more objective and sociologically accurate description of privacy. When it comes to privacy, many a times it is discriminated between lesser privacy right and greater privacy right. The violation of greater privacy right happens when the society has nothing to gain from that publicity but the individual suffers a great loss due to that media exposure. The reason being that privacy is culturally diverse concept and it is unlikely that a single fair hierarchy of privacy concerns can be formulated which can satisfy all people everywhere.

In *Cinel v. Connick* [9] the facts were regarding seizure of homemade videotapes by local police authorities, from a priest engaged in homosexual activity with two young parishioners, copies of which were subsequently leaked to local investigative reporters who broadcasted a part of them. Though the material was improperly leaked from investigative files, the Federal District Court held that disclosure of the information did not violate the plaintiff’s right of privacy because the information reflected on the

guilt or innocence of the plaintiff-priest and was therefore protected by the “newsworthiness” privilege.

In *Cox Broadcasting Corp. v.Cohn* [10], the reporter employed by a television channel during a news report of a rape case, broadcasted the deceased rape victim’s name, which he had obtained from the public records available for inspection. The father of the victim brought a damage action claiming that his right to privacy has been invaded by the broadcast of his daughter’s name. The Company argued that the rape victim’s name was a matter of public interest. The Georgia Supreme Court held that once the rape victim’s name is in the official records open to public inspection, there is no invasion of privacy.

In *Miller v N.B.C.* [11], the Court commented on the dearth of precedents for similar intentional trespasses and invasions of privacy. The Court referred to some of the precedents [12] and many of them involved bizarre facts, and not accidentally. So all involved intrusions were generated by curiosity. The Court in *Miller* – made it clear that a film crew entering a home with paramedic’s was an intentional trespass that is actionable in tort. Hence the Court extended the protection of tort law as in UK. The modern concept of defamation was stated in USA in *Rosenblatt v.Baer* [13], where the Court stated that it is the right of a man to protection of his own reputation from unjustified invasion and wrongful hurt and it reflects no more than our basic concept of the essential dignity and worth of every human being – a concept which is at the root of any decent system of ordered liberty [14].

## Public Figures

In USA, it has been considered for a very long period, that a public figure is a person who by his accomplishments, fame or profession or for other reasons gives the public a legitimate interest in his work, affairs, character and life. It would be right to recall the former US President Clinton issue, wherein he was [15] accused of extra marital sex, while in office. Finally when there was no other way out, he painfully faced the American public, and admitted his guilt, at the same time also pleaded that even Presidents have private lives. He urged that it is time, to stop this prying into private lives.

## Fair Trial

Pretrial reporting is definitely an offence against fair trial. It can also be termed as pre-trial publicity. In one of the earliest cases, that came up for consideration before the Supreme Court was *Irvin v.Dowd* [16]. In this case, the defendant, Leslie Irvin, an accused in a murder case, was subjected to a series of prejudicial news against him. This was in response to sex murder committed by him to which he confessed. Many of the items published or broadcasted before Irvin’s trial referred him as the „confessed slayer of

six". Even his advocate received criticism for defending his case. His advocate wanted and was granted a change in the venue of trial. When the trial began, 90% of the jurors had already formed some opinion about Irvin's guilt. Though his advocate complained that four of the seated jurors had stated that Irvin was guilty, still the trial continued. Irvin was found guilty and the jury sentenced him to death. Lengthy appeals brought Irvin's case to the US Supreme Court. Still his case was not decided on its merits. It was only in 1961, that all nine members of the Supreme Court agreed that Irvin had not received a fair trial. The reason was that the jury was already prejudiced against him due to media trial. He was therefore given a new trial, although he was still convicted, but this time to life imprisonment and not to death.

Justice Tom. C. Clark stated in his majority opinion that Courts do not need that Jurors be totally ignorant of the facts and issues involved in a criminal trial. It is enough if a juror can give a verdict based on evidence presented in the Court of law.

In the past five decades in US, free trial has faced controversies against a free press. This took place in the wake of several nationally publicized trials and assassination of President John F. Kennedy in 1963, Senator Robert Kennedy and Martin Luther King in 1968[17].

### Press during Trial Proceedings

By 1970's cameras were brought back into the Court room by number of states. Finally in *Chandler v. Florida* [18], the Supreme Court stated:

"An absolute constitutional ban on broadcast coverage of trials cannot be justified simply because there is a danger in some cases that prejudicial broadcast accounts of pretrial and trial proceedings may impair the ability of jurors to decide the issue of guilt or innocence....."[19].

Thirty six states approve cameras in trial and appellate Courts [20]. A very live illustration of media trial by reporting of Court proceedings is the case of *O.J. Simpson* [21]. In this case, this American football player was accused of killing his ex-wife and her boyfriend. The trial was televised and he was finally acquitted by the Criminal Court in 1995. This was a case, which went through a very lengthy internationally publicized criminal trial which was followed sequence by sequence by the American audience. Later, in 1997 in a civil court on similar facts, a unanimous jury decided that he was guilty of causing wrongful death of Ronald Goldman and battery of Nicole Brown.

### Restrictive order (Gag)

Though in *Nebraska Press Association v. Stuart* [22], judicial orders gagging the press were discouraged. The basic issue is that gag orders will still continue against media unless challenged and set aside by the Court. The Supreme Court of the US unanimously upheld the gag order preventing release and publication of deposition material in *Seattle Times v. Rhinehart* [23]. The *Nebraska press* tests for prior restraint are:- Publicity must impair the right to a fair trial, no less restrictive alternative to prior restraint

available, a prior restraint would effectively prevent the harm to defendant's rights.

### Contempt of Court

There are certain rules [24] of Contempt of Court which both State and Federal Courts apply. These are usually in the form of violation of orders. Contempt laws are not used against the press for interfering in sub-judice matters, but in certain cases, it does come in the shape of „restrictive gags“, which has been already discussed earlier. Though restrictive gags are to be used against the media it is very sparingly seen practiced.

### Conclusion

In all matters in which press freedom is questioned, the Courts have to consider the fact that whether the matter is newsworthy or not when the question raised is affecting the reputation or undue exposure. Even in the case of obscenity one finds the U.S. Courts very unwilling to interfere if art and lifestyle pre-dominates the issue. In conclusion, one can say that Freedom of Press dominates the scene in US. Only in stray cases, do we find the Courts caring to protect individuals against violations by media. There is no doubt, however important that media might be necessary for democracy. It can never be of more priority than an individual and his dignity of life. Society is for the individual and without individuals there can be no society. The foundation of a democracy is protection of human dignity. If that role is not foremost in the mind of media magnates, then they fail to fulfill their duty towards society and cannot claim right to media freedom as a democratic right.

### References

- [1] Warren and Brandeis – „The Right to privacy“, 4 Harv. L. Rev.193.
- [2] *Ibid.*
- [3] **First Amendment** – Right of freedom of religion, freedom of speech, freedom of the press, freedom of assembly and freedom of petition.  
**Third Amendment** – prohibits the government from using private homes as quarters for soldiers during peace time without the consent of the owners.  
**Fourth Amendment** – guards against searches, arrests and seizure of property without a specific warrant or a probable cause to believe a crime has been committed. Some rights to privacy have been enforced from this amendment.  
**Fifth Amendment** – prohibits double jeopardy, forbids punishment without due process of law and prohibits self-incrimination.  
**Ninth Amendment** – declares that the listing of individuals rights in the Constitution and the Bill of Rights is not meant to be Comprehensive and is retained by people.  
**Fourteenth Amendment** – defines a set of guarantees for US citizenship, prohibits states from abridging citizens privileges or immunities and rights to due process and equal protection of the law. United States Constitution from Wikipedia, the free encyclopedia

[http://en.wikipedia.org/wiki/united\\_states-Constitution](http://en.wikipedia.org/wiki/united_states-Constitution)  
Retrieved on 27/7/09.

- [4] *Roberson v. Rochester Folding Box Co*, 64 N.E.442 (N.Y.1902).
- [5] *Ibid.*
- [6] *Katz v. United States* 389 U.S. 347 (1967) .
- [7] *Ibid.*
- [8] *Supra n. 1.*
- [9] *Cinel v. Connick* 792 F. Supp. 492 (1992).
- [10] *Cox Broadcasting Corp. v.Cohn*, 420 U.S. 469 (1975).
- [11] *Miller v N.B.C.*, 232 Cal.Rptr.668 (1986).
- [12] Hospital intrusion cases where the person whose privacy was invaded was ill or dying, e.g. *Barlerv. Time, Inc*; 159S.W 2d 291(MO. 1942); *Estate of Berthianme v. Pratt*, MD, 395. A.2d 792 (MC. 1976), where the hospital authorities summoned the Press to take pictures of a deformed infant who had died in the operating room.
- [13] *Rosenblatt v. Baer*, 383 U.S.75, 92, 86, S. ct.669, 679 (1966).
- [14] *Ibid.*
- [15] *The Indian Express*, August 19,1998 Wednesday p. 15.
- [16] *Irvin v. Dowd*, 366 U.S, 717, 719, 81 S.Ct. 1639, 1641 (1961).
- [17] Dwight L. Teeter, Jr. and Bill Loving, *Laws of Mass Communication – Freedom and Control of Print and Broadcast Media*, Tenth Edition New York Foundation Press, (2001), p. 504.
- [18] *Chandler v. Florida*, 449 U.S. 560, 101 S. Ct. 802 (1981).
- [19] *Ibid.*
- [20] *Supra n.81* at p. 523.
- [21] *People v. Simpson*, 1995, [http://en.wikipedia.org/wiki/o.j. Simpson](http://en.wikipedia.org/wiki/o.j._Simpson), retrieved on 25/11/10 .
- [22] *Nebraska Press Association v. Stuart* 427 U.S. 539, 542, 96 S. Ct 2791,2795 (1976).
- [23] *Seattle Times v. Rhinehart*, 467 U.S. 20, 22, 104 S. Ct. 2199, 2202 (1984), 10 Med L. Rptr at 1711.
- [24] Barry .S. Engel “*United States Contempt of Court Principles as applied in the Asset Protection Planning Context*” Esq., F.O.1.  
<http://www.offshoreinstitute.com/contempt.html>.